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GUIDELINES FOR ESTABLISHING WATER QUALITY STANDARDS FOR INTERSTATE WATERS (UNDER THE WATER QUALITY ACT OF 1965, PUBLIC LAW 89-234)

Federal Water Pollution Control Administration
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UNITED STATES

DEPARTMENT OF THE INTERIOR

FEDERAL WATER POLLUTION CONTROL ADMINISTRATION

GUIDELINES FOR ESTABLISHING WATER QUALITY STANDARDS FOR INTERSTATE WATERS

(Under the Water Quality Act of 1965, Public Law 89-234)

May, 1966

The Water Quality Act of 1965 amended the Federal Water Pollution Control Act to provide for establishment of water quality standards for interstate waters. In the absence of State action, such standards will be adopted by the Secretary of the Interior under procedures set forth in the Act.

Standards adopted by a State will become the standards applicable if:

1. The Governor or water pollution control agency files by October 2, 1966, a letter of intent that the State, after public hearings, will, before June 30, 1967, adopt (a) water quality criteria applicable to interstate waters or portions thereof within the State, and (b) a plan for the implementation and enforcement of the criteria; and,

2. The State subsequently adopts such criteria and plan; and,

3. The Secretary determines that the State criteria and plan are consistent with the purposes of the Act, i.e., "...to enhance the quality and value of our water resources and to establish a national policy for the prevention, control, and abatement of water pollution."

It is the position and purpose of the Federal Water Pollution Control Administration to encourage and support the States in establishing their own standards. The guidelines that follow are presented to assist the States in the development of the required water quality criteria and the plan for the implementation and enforcement thereof, and to delineate factors which will be considered in the Secretary's determination of whether the criteria and plan are consistent with the purposes of the Act.

GUIDELINES IN THE ACT AND ITS LEGISLATIVE HISTORY

First consideration should be given to the substantive guidelines on Congressional intent and purpose in establishing the water quality standards requirement that are contained in the Federal Water Pollution Control Act, as amended by the Water Quality Act of 1965, and in its legislative history:

1. "Standards of quality established pursuant to this subsection shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this Act. In establishing such standards the Secretary, the Hearing Board, or the appropriate State authority shall take into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, agricultural, industrial, and other legitimate uses." (Section 10 (c) (3) of the Act.)

2. "The discharge of matter into such interstate waters or portions thereof, which reduces the quality of such waters below the water quality standards established under this subsection (whether the matter causing or contributing to such reduction is discharged directly into such waters or reaches such waters after discharge into tributaries of such waters), is subject to abatement in accordance with the provisions of ..." the Act. (From Section 10 (c) (5) of the Act).

3. "Economic, health, esthetic, and conservation values which contribute to the social and economic welfare of an area must be taken into account in determining the most appropriate use or uses of a stream. There ought to be a constant effort to improve the quality of the water supply, it being recognized that the improvement of the quality of water makes it available for more uses." (Senate Report No. 10 on the Federal Water Pollution Control Amendments of 1965, 89th Congress, 1st Session).

4. "Water quality standards would provide an engineering base for design of treatment works by municipalities and industries. Such standards would enable municipalities and industries to develop realistic plans for new plants or expanded facilities, without uncertainties about waste disposal requirements on interstate waters." (Senate Report No. 10, as above).

5. "Water quality standards are not designed for use primarily as an enforcement device; they are intended to provide the Secretary and State and local agencies with additional tools for objective and clear public policy statements on the use or uses to which specific segments of interstate waters may be put. Their principal objective is the orderly development and improvement of our water resources without the necessity of adversary proceedings which inevitably develop in enforcement cases." (Senate Report No. 10, as above).

6. "The committee must reemphasize its intent that water quality standards are not designed to 'lock in' present uses of water or to exclude other uses, not now possible. The standards are not a device to insure the lowest common denominator of water quality but to enhance the quality and productivity of our water resources." (Senate Report No. 10, as above).

7. "The committee intends that water quality standards should be applied on the basis of the water quality requirements of present and future uses of a stream or section of stream, after due consideration of all factors and variables involved." (Senate Report No. 10, as above).

POLICY GUIDELINES

No one has the right to pollute. As President Johnson expressed it when he signed into law the Water Quality Act of 1965, "No one has a right to use

America's rivers and America's waterways that belong to all the people as a sewer. The banks of a river may belong to one man or one industry or one state, but the waters which flow between those banks should belong to all the people."

In support of the President's position, the specific provisions of the Water Quality Act of 1965, and expressions of policy by the Congress in enacting that legislation, the following additional policy guidelines are set forth:

1. Water quality standards should be designed to "enhance the quality of water." If it is impossible to provide for prompt improvement in water quality at the time initial standards are set, the standards should be designed to prevent any increase in pollution. In no case will standards providing for less than existing water quality be acceptable.

2. No standards of water quality will be approved which provide for the use of any stream or portion thereof for the sole or principal purpose of transporting wastes.

3. Water quality criteria should be applied to the stream or other receiving water or portions thereof. The criteria should identify the water uses to be protected and establish limits on pollutants or effects of pollution

necessary to provide for such uses. Numerical values should be stated for such quality characteristics where such values are available and applicable. Where appropriate, biological or bioassay parameters may be used. In the absence of appropriate numerical values or biological parameters, criteria should consist of verbal descriptions in sufficient detail as to show clearly the quality of water intended (e.g., "substantially free from oil").

4. The measure of time period and limiting values which will govern for purposes of the criteria should be defined (e.g., annual arithmetric mean concentration, single daily maximum concentration). Where appropriate, the specified recurrence and duration of the accepted design streamflow should be defined (e.g., 25-year recurrence of minimum flow of 10-day duration).

5. Water quality criteria should be accompanied by a description of present water quality and uses, together with uses expected in the future and the water quality required to make those uses possible. The water quality standards proposed by a State should provide for:

> (a) Potential and future water uses as well as the present intended use and uses;
>
> (b) The upgrading and enhancement of water quality and the use or uses of streams or portions thereof that are presently affected by pollution;

(c) The maintenance and protection of quality and use or uses of waters now of a high quality or of a quality suitable for present and potential future uses.

6. The plan for implementing and enforcing the water quality criteria should be submitted in sufficient detail to describe the nature of the actions to be taken to achieve compliance, a time schedule for such compliance, the controls and surveillance for measuring compliance, and the enforcement authority and measures for ensuring compliance. It is recognized that there are a number of ways that the water quality standards can be effectively implemented and enforced by the States; achievement of the purposes of the Act, rather than the methods by which this is done, is paramount.

7. The plan should include consideration of all relevant pollutional sources, such as municipal and industrial wastes, cooling water discharges, irrigation return flows, and combined sewer overflows.

8. No standard will be approved which allows any wastes amenable to treatment or control to be discharged into any interstate water without treatment or control regardless of the water quality criteria and water use or uses adopted. Further, no standard will be approved which does not require all wastes, prior to discharge into any interstate water, to receive the best practicable treatment or control unless it can be demonstrated that a lesser degree of treatment or control will provide for water quality enhancement commensurate with proposed present and future water uses.

9. Public hearings are required to be held by States establishing standards in accordance with the provisions of the Act.

A summary of each public hearing, accompanied by certification as to notice and conduct of such public hearing in conformity with procedures provided therefor, should be provided the Secretary. The summary should adequately advise him of:

(a) The waters which were the subject of the public hearing;

(b) The interests and interest groups represented, including those in downstream or adjacent States which would be affected by the standards;

(c) The views expressed on water quality and water uses by the various interests and interest groups;

(d) Statistical data, reports and other information submitted in support of statements, views and positions expressed at the hearing, including those provided by the State or States holding the hearing.

When necessary to the Secretary's determination that the State criteria and plan are consistent with the purposes of the Act, a full transcript of the hearing and supporting data will be requested.

In the review of the hearing record to determine whether the State criteria and plan are consistent with the purposes of the Act, attention will be given to the extent to which there was expression of views by conservation,

civic, recreation, agricultural, industrial and planning interests, as well as by Federal, State, interstate and local agencies. Particular attention will be given to the extent to which there was opportunity for participation by interests downstream or adjacent States which would be affected by the standards.

10. State standards will be reviewed in terms of their consistency and comparability with those for affected waters of downstream or adjacent States. Coordination is encouraged among States to assure such consistency.

11. The use or uses of the waters concerned, the water quality criteria to provide for such use or uses, and the plan for implementing the water quality criteria should be in conformity with any comprehensive water pollution control program developed pursuant to Section 3 of the Federal Water Pollution Control Act, as amended; should encompass any remedial program recommended by the Secretary as a result of an enforcement action taken under Section 10 of the Act; and should be revised to reflect any recommendations resulting as such programs and actions develop.

12. To meet the goals established by the Act, water quality standards must be adequate to protect and upgrade water quality in the face of population and industrial growth, urbanization, and technological change. In accordance with the provisions of the Act, it is anticipated that after the initial setting of standards,

periodic review and revision will be required to take into account changing technology of waste production and waste removal and advances in knowledge of water quality requirements developed through research.

WATERS TO WHICH STANDARDS PROVISIONS APPLY

Water quality standards, under Section 10 (c) (1) of the Act are to be established for, and made applicable to, interstate waters or portions thereof within the State.

1. The term "interstate waters," as defined in Section 13 (e) of the Act, means all rivers, lakes, and other waters that flow across or form a part of State boundaries, including coastal waters.

2. Within this definition, waters that flow across or form a part of State boundaries are subject to the provisions of Section 10 (c) (1) of the Act.

3. Waters that flow across or form a part of the international boundary between a State and a foreign country are interstate waters within the meaning of the definition provided in Section 13 (e) of the Act and similarly subject to the provisions of Section 10 (c) (1) of the Act.

4. Coastal waters subject to the provisions of Section 10 (c) (1) of the Act are the ocean waters along straight coasts, the waters along indented coasts which are subject to the ebb and flow of the tides, and the waters of the Great Lakes.

5. As noted above, the definition of "interstate waters" is in terms of water bodies -- "rivers," "lakes" and "other waters" -- and is not limited to only those portions of these water bodies at the point at which they flow across or form a part of State boundaries. In effect, therefore, water quality standards are to be established for and made applicable to the entire stretch of the interstate waters within a State.

6. Tributaries of interstate waters, which are not in themselves interstate waters, are not subject to the requirements of subsection 10 (c) (1) of the Act. However, it is important to note that the discharge of any matter into such tributaries which reaches interstate waters and reduces the quality of such interstate waters below the established water quality standards is subject to abatement under Section 10 (c) (5) of the Act.

COOPERATIVE ASSISTANCE

Within the limits of its resources, the Federal Water Pollution Control Administration will assist the States in developing their water quality criteria and plans upon request.

1. Requests for technical assistance and other information should be directed to the appropriate Regional Director of the Administration.

2. In addition, the Administration will establish national technical committees, one for each major water use defined in the Act, to review

scientific findings on water quality requirements for each specific use and to advise the Secretary concerning this. Persons scientifically and technically qualified will be invited to serve. The technical committees will review and update these reports periodically to reflect new information. The findings of these committees, subject to review and approval by the Secretary, will serve as guides for approving water quality criteria and subsequent revisions thereof. These findings will be provided to the States as they become available.

3. The Administration has long-term water quality requirements research underway, and this will be accelerated. The results of this research will be made available as standards are revised, enforcement actions are taken, and programs of water quality enhancement progress.

4. The Administration encourages and will support cooperative State-Federal activities in connection with any State water quality standards implementation and enforcement plan. Initial discussions should be with the appropriate Regional Director.